

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT and LICENSE NO. 471193  
Issued to: Wilbur Russel DAVIS Z-219 22 8999

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2226

Wilbur Russel DAVIS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 6 December 1979, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Mate on board the SS DELTA NORTE under authority of the document and license above captioned, on or about 6 August 1979, Appellant wilfully disobeyed a lawful order given him by the Chief Mate; to wit, he failed to complete stripping the vessel's logbook before going ashore.

The hearing was held at New Orleans, Louisiana, on 3 October 1979, 7 November 1979, and 6 December 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Chief Mate of the SS DELTA NORTE and two pieces of documentary evidence: (a) certified extract from Shipping Articles of SS DELTA NORTE (10 ex 2), (b) a copy of logbook entry of SS DELTA NORTE (10 ex 4).

In defense, Appellant offered in evidence his own testimony and a letter from Baker-Lyman Co., Inc. dated 15 October 1979.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant admonishing him.

The entire decision was served on 17 December 1979. Appeal was timely filed on 19 December 1979 and perfected on 21 April 1980.

FINDINGS OF FACT

On 6 August 1979, Appellant was serving as second mate on board SS DELTA NORTE and acting under authority of his license and document while the vessel was in the port of New Orleans, Louisiana.

On the day in question, the vessel was loading and discharging barges and containers. Concurrent with this action, a biennial inspection was being performed by the Coast Guard. During the morning, Appellant approached the Chief Mate and asked him if his presence would be required on deck. To this the Chief Mate replied in the negative and directed Appellant to go to the bridge in order to work on his charts and to strip the logbook before 1700 (stripping the logbook consisted of removing the carbon paper between the pages of the log. Later in the afternoon of the sixth, Appellant again approached the Chief Mate and asked if he could go ashore. The Chief Mate then directed the Appellant to complete the stripping of the logbook before he left the ship. At 1630, the Chief Mate observed Appellant returning to the vessel with a package in his hand. Upon checking to see whether the logbook had in fact been stripped and finding that the task had not been completed, he discharged Appellant.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(a) the case should be dismissed because the Investigating Officer failed to read the charges and specification into the record;

(b) the Coast Guard lacks jurisdiction under 46 U.S.C. 239 to proceed against a license or document when the offense is of the type herewith charged; and

(c) the charge was not proved by a preponderance of the evidence.

APPEARANCE: Lambert, Nowalsky and Lambert, New Orleans, Louisiana 70130, by Mr. John D. Lambert, Jr., Esq.

#### OPINION

##### I

In his first contention, Appellant argues that the proceedings should be dismissed because the Investigating Officer failed to enter the charge and specification into the record. This base of appeal is groundless.

Charges were preferred against Appellant by the Investigating Officer on 27 September 1979. The charges were preferred by utilizing form CG-2639 and this charge sheet was made a portion of the record on appeal. Furthermore, the Administrative Law Judge in fact read the charge and specification into the record on 7 November 1974 for the arraignment. In view of the fact that Appellant had actual knowledge of the charges, a copy of the charge sheet was included in the record, and the Administrative Law Judge read the charge on the record, the failure of the Investigating Officer to read the charges at the hearing is of no moment and indeed is not required.

## II

Appellant next contends that the Coast Guard lacks jurisdiction under 46 USC 239 to promulgate regulations to investigate acts of misconduct which do not involve loss of life. In arriving at this conclusion, Appellant employs a reading of 46 USC 239(b) which is inaccurate. The correct interpretation (and in fact, the only interpretation which makes sense) of 46 USC 239(b) is that "the Commandant of the Coast Guard shall establish rules and regulations for the investigation of ... all cases of acts of incompetency or misconduct committed by any licensed or holder of a certificate of service while acting under the authority of his license or certificate of service, whether or not any of such acts are committed in connection with any marine casualty or accident." (emphasis added). It is, therefore, abundantly clear that Congress intended for the agency to have the authority to investigate acts of misconduct, even though there has not been a marine casualty.

Appellant advances an argument that his act of misconduct, if any, was at best de minimis and not a suitable subject for this proceeding. This argument goes on further to state that the disobedience of the order did not, and could not, have resulted in a marine casualty. While that is probably a true statement, the disobedience of any lawful order, no matter how small or trivial it may seem, is a matter of grave concern. A life on the sea must be grounded upon the firm principle of unquestioning obedience to orders. In Decision on Appeal No. 1857 it was said: "disobedience to a lawful order is an offense in any kind of jurisprudence." Therefore, I do not view Appellant's failure to obey this order as de minimis.

## III

The third ground upon which Appellant bases his appeal is that the finding of guilty is not proven by a preponderance of the evidence. Unfortunately for Appellant's argument, the test for

supporting findings in these proceedings is "substantial evidence."

The substantial evidence test has been described in Laws v. Celebrezze, 368 F.2d 640 (4th Cir. 1966) as:

evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

Upon a review of the record it is clear to me that this test has been met.

While there may be some conflicts in the evidence presented, I will not substitute my judgment for that of the Administrative Law Judge. It has been consistently held that it is a function and responsibility of the Administrative Law Judge to observe the demeanor of the witnesses and evaluate the credibility of their testimony; see for example, Decision on Appeal No. 2017. Unless Appellant sets forth some reason to justify a determination that the Administrative Law Judge's findings are in error, I will not substitute my judgment for that of the Administrative Law Judge. A mere conflict in testimony is not sufficient. This ground of appeal is therefore also denied.

#### CONCLUSION

The findings of fact and order of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature.

#### ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 6 December 1979, is AFFIRMED.

R. H. SCARBOROUGH  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D. C., this 29th day of July 1980.

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